



MEDIA FREEDOM AND INFORMATION ACCESS CLINIC  
INFORMATION SOCIETY PROJECT

July 28, 2017

VIA ECF

The Honorable Judge Jesse M. Furman  
Thurgood Marshall  
United States Courthouse  
40 Foley Square  
New York, NY 10007

**RE: Seife v. Food and Drug Administration, *et ano*, No. 1:17 Civ. 03960 (S.D.N.Y. 2017).**

**Letter Motion to Reopen the Case**

Dear Judge Furman:

We write with reference to the Court's July 27 order granting the parties' joint stipulation and directing the clerk to close the case. ECF No. 39. While the stipulation resolves plaintiff's motion for partial summary judgment on the issue of expedited processing, it does not resolve the entire case. We thus respectfully request the Court to direct the clerk to reopen the case.

This Complaint in this FOIA case alleges more than a violation of the expedited processing provisions of the law; expedited processing was the only issue raised at the outset in plaintiff's motion for partial summary judgment. The Complaint also alleges a failure to disclose information in violation of FOIA, and that issue will not be ripe for adjudication until defendants disclose the requested records. *See* Complaint ¶¶ 75-76.

As defendants produce records under the stipulated schedule, now entered by the Court, they already have made clear their intent to withhold information under several FOIA exemptions, including (b)(4) (confidential commercial information), (b)(5) (intra-agency deliberations), and (b)(6) (personal privacy). *See* 5 U.S.C. § 552(b) (FOIA exemptions). While plaintiff will not challenge redactions that appear justified, including redactions defendants have made to the Behr Chronology or the Jenkins memo, he may well dispute other redactions and withholdings of entire documents. Because the issue of the propriety of defendants' withholding of information falls squarely within the scope of this lawsuit, it is appropriate for the case to remain open until these issues can be resolved.

Further, under FOIA a government agency must pay reasonable attorneys' fees to a substantially prevailing party. *Id.* § 552(a)(4)(E). This determination, too, cannot fully be made



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until the records are disclosed and any redaction disputes resolved. *See e.g., Pietrangelo v. U.S. Army*, 568 F.3d 341, 343 (2d Cir. 2009).

Plaintiff respectfully requests the case be reopened so that these issues framed by the Complaint can be addressed and resolved.

Respectfully submitted,

Media Freedom Information Access Clinic<sup>1</sup>

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<sup>1</sup> This letter has been prepared by the Media Freedom and Information Access Clinic, a program of the Abrams Institute for Freedom of Expression at Yale Law School. Nothing in this letter should be construed to represent the institutional views of the law school, if any.